

Robinson, St. John & Wayne
Two Penn Plaza East
Newark, New Jersey 07105
(201) 491-3300
Attorneys for Respondents Steven
Verchow and Alexander Kuntzevich

FILED

NOV 17 1994

NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE SUSPENSION :	STATE OF NEW JERSEY
OR REVOCATION OF THE LICENSE OF :	DEPARTMENT OF LAW & PUBLIC SAFETY
STEVEN VERCHOW, D.C. :	
LICENSE NO. MCOI305 :	DIVISION OF CONSUMER AFFAIRS
and :	STATE BOARD OF CHIROPRACTIC
:	EXAMINERS
:	
ALEXANDER KUNTZEVICH, D.C.: :	ADMINISTRATIVE ACTION
LICENSE NO. MCO1451 :	
:	ANSWER, DEFENSES AND REQUEST
TO PRACTICE CHIROPRACTIC IN THE :	FOR PLENARY HEARING BEFORE
STATE OF NEW JERSEY :	<u>THE OFFICE OF ADMINISTRATIVE LAW</u>
:	

Respondents Steven Verchow, D. C. and Alexander Kuntzevich, D. C. answer as follows:

ALLEGATIONS COMMON TO ALL COUNTS

Respondents admit the allegation contained in paragraphs 3-6, 8.

Respondents deny the allegations contained in paragraphs 7, 9-11.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1-2, 12-16.

COUNT I

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny and/or are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2-5.

Respondents deny the allegations contained in paragraph 6.

COUNT II

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny the allegations contained in paragraphs 2-4.

COUNT III

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny and/or are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2-5.

Respondents deny the allegations in paragraphs 6-8.

COUNT IV

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny the allegations contained in paragraphs 2-3.

COUNT V

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny and/or are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2-8.

Respondents deny the allegations contained in paragraph 9.

COUNT VI

Respondents incorporate prior answers as if fully set forth herein.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.

Respondents deny the allegations contained in paragraphs 2-3, 5-6.

COUNT VII

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny and/or are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2-5.

COUNT VIII

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny the allegations contained in paragraphs 2-5.

COUNT IX

Respondents incorporate prior answers as if fully set forth herein.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2-3.

Respondents deny the allegations contained in paragraphs 4-5.

COUNT X

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny the allegations contained in paragraphs 2-3.

COUNT XI

Respondents incorporate prior answers as if fully set forth herein.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

Respondents deny the allegations contained in paragraphs 2, 4.

COUNT XII

Respondents incorporate prior answers as if fully set forth herein.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

Respondents deny the allegations contained in paragraphs 2, 4.

COUNT XIII

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny the allegations contained in paragraphs 2-7.

COUNT XIV

Respondents incorporate prior answers as if fully set forth herein.

Respondents deny the allegations contained in paragraphs 2-6.

COUNT XV

Respondents incorporate prior answers as if fully set forth herein.

Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2-3.

Respondents deny the allegations contained in paragraphs 4-5.

WHEREFORE, Respondents respectfully request that the within proceeding be dismissed.

DEFENSES

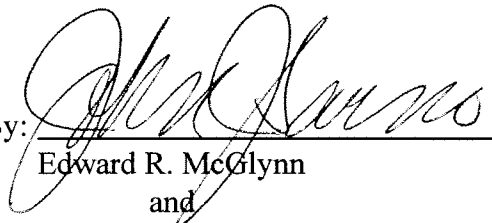
1. The Administrative Complaint has been brought in bad faith and in a discriminatory manner.
2. One or more members of the Board of Chiropractic Examiners ("Board") are biased against Respondents and have a conflict of interest.
3. The regulations relied upon by the Board have not been properly adopted under the Administrative Procedure Act.

4. The regulations relied upon by the Board cannot be applied retroactively.
5. To the extent that the Board seeks legal and/or equitable remedies, it does not have jurisdiction and its attempt to impose such remedies constitutes and ultra vires act and a violation of the separation of powers doctrine.
6. Respondents are being denied due process and equal protection of the laws under the State and Federal Constitutions.
7. The Administrative Complaint, together with other pending proceedings, constitutes an impermissible exercise of the State's police powers.
8. Portions of the Administrative Complaint are barred by the entire controversy doctrine and other like doctrines applicable to administrative proceedings.

**REQUEST FOR PLENARY HEARING BEFORE
THE OFFICE OF THE ADMINISTRATIVE LAW**

The within matter constitutes a contested case under N.J.S.A. 52:14B-11. All contested cases are referable to the Office of Administrative Law under N.J.S.A. 52:14B-10(c). Respondents request a plenary hearing on all issues before the Office of Administrative Law.

ROBIN, ST. JOHN & WAYNE

By: 
Edward R. McGlynn
and
John J. Sarno
Attorneys for Respondents

Dated: November 17, 1994

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

FILED

OCT 12 1994

By: August T. Lembo
Deputy Attorney General
Division of Law
124 Halsey Street, 5th Floor
P.O.B. 45029
Newark, New Jersey 07102
Tel. No. (201) 648-3070

NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE SUSPENSION	:	Administrative Action
OR REVOCATION OF THE LICENSE OF	:	
	:	COMPLAINT
STEVEN VERCHOW, D.C.	:	
LICENSE NO. MC01305	:	
	:	
and	:	
	:	
ALEXANDER KUNTZEVICH, D.C.	:	
LICENSE NO. MC01451	:	
	:	
TO PRACTICE CHIROPRACTIC IN THE	:	
STATE OF NEW JERSEY	:	

Deborah T. Poritz, Attorney General of New Jersey, by
August T. Lembo, Deputy Attorney General, with offices located at
the Division of Law, 124 Halsey Street, 5th Floor, Newark, New
Jersey 07102, by way of Complaint says:

ALLEGATIONS COMMON TO ALL COUNTS

1. Complainant Attorney General of New Jersey is
charged with enforcing the laws of the State of New Jersey pursuant
to N.J.S.A. 45:17A-4 and is empowered to initiate administrative
disciplinary proceedings against persons licensed by the Board of
Chiropractic Examiners pursuant to N.J.S.A. 45:1-14 et seq.

2. The New Jersey State Board of Chiropractic Examiners is empowered with the duty and responsibility of regulating the practice of chiropractic in the State of New Jersey pursuant to N.J.S.A. 45:9-41.4 et seq. and N.J.S.A. 45:1-14 et seq.

3. Respondent, Steven Verchow, D.C. (hereinafter "Dr. Verchow") is the holder of License No. MC01305 with offices at 374 Forest Avenue, Paramus, New Jersey 07652, and has been licensed to practice chiropractic in the State of new Jersey at all times relevant hereto and particularly since at least in or about March 1991.

4. Respondent, Alexander Kuntzevich, D.C., (hereinafter "Dr. Kuntzevich") is the holder of License No. MC01451 with offices at 360 Kinderkamack Road, Oradell, New Jersey 07642 and has been licensed to practice chiropractic in the State of New Jersey at all times relevant hereto and particularly since at least in or about March 1991.

5. Respondents Steven Verchow and Alexander Kuntzevich (hereinafter "Respondents") owned or maintained various clinics (hereinafter "treatment centers") including but not limited to the following, at all relevant times, and particularly since in or about March 1991:

A. Accident and Illness Center of Passaic, located at 200 Gregory Avenue, Passaic, New Jersey (hereinafter the "Passaic treatment center").

B. Paterson-Bergen Chiropractic Associates, located at 650 Broadway, Paterson, New Jersey (hereinafter the "Paterson treatment center").

C. Accident and Illness Center of Perth Amboy, located at 255 Smith Street, Perth Amboy, New Jersey (hereinafter the "Perth Amboy treatment center").

D. Accident and Illness Center of Newark located at 90-A Broadway, Newark, New Jersey (hereinafter the "Newark treatment center").

E. Bergen-Hudson-Passaic Chiropractic Center, located at 5300 Bergenline Avenue, West New York, New Jersey (hereinafter the "West New York treatment center").

6. Respondents owned or maintained various clinics for the purported purposes of rendering diagnostic services (hereinafter "diagnostic clinics") at all relevant times and particularly since in or about March 1991, these clinics included, but are not be limited to, the following:

A. Associated Health Services, located at 74 Passaic Avenue, Passaic, New Jersey and 625/635 Broadway, Paterson, New Jersey.

B. Advanced Thermographic Imaging, located at 74 Passaic Avenue, Passaic, New Jersey and 625/635 Broadway, Paterson, New Jersey.

C. Neuro-Kinetic Diagnostics, located at 74 Passaic Avenue, Passaic, New Jersey and 625/635 Broadway, Paterson, New Jersey.

D. Northern Diagnostics located at 74 Passaic Avenue, Passaic, New Jersey.

7. Respondents employed for various periods of time, since in or about March 1991, at least fifteen chiropractic physicians (hereinafter, the "Associates"), licensed to practice chiropractic by the Board in the State of New Jersey, purportedly to offer diagnostic and chiropractic treatment services at the treatment clinics. Said Associates were commonly directed by Respondents to implement certain prescribed diagnostic and treatment formats in the rendering of chiropractic care to patients.

8. Respondents employed for various periods of time, since in or about March 1991, various persons who were not chiropractors licensed by the Board to perform certain health care services, to perform secretarial, clerical, record-keeping, telemarketing, public relations and managerial services at the treatment clinics and the diagnostic clinics at the direction of Respondents.

9. Respondents established the "Verchow and Kuntzevich method of chiropractic practice, patient relations and office administrative management and procedure", and this method was one of the premises upon which Respondents entered into employment contract agreements with Associates at various times since in or about March 1991.

10. Respondents directed, supervised and controlled the chiropractic practices of the Associates and required the

Associates to practice chiropractic in a prescribed manner as a condition for the Associates' continued employment with Respondents at all times relevant hereto and particularly since in or about March 1991.

11. Respondents directed the Associates and clerical staff to follow directions and instructions of certain licensed and unlicensed supervisory personnel with respect to the practice of chiropractic, including but not limited to, the rendering of chiropractic treatment services, chiropractic diagnostic services, billing for such services, patient record-keeping and relationships with third-party payers.

12. Respondents caused to be issued over their signatures, "Attending Physician's Reports" which were issued to obtain insurance reimbursement and which set forth what were purported to be accurate statements of the diagnoses of patients and the chiropractic services rendered to these patients.

13. Respondents caused to be issued over their signature lines, "Narrative Reports" concerning various aspects of the chiropractic care of the patients at the treatment clinics including, but not limited to, the conditions, symptoms, orthopedic and neurological examinations, various diagnostic tests, diagnoses and prognoses of the patients.

14. Pursuant to N.J.A.C. 13:44E-2.4(a), in effect since August 19, 1991, each patient in a chiropractic facility is required to have a chiropractor of record who shall remain primarily responsible for assuring the proper implementation of the

chiropractic services to be rendered to such patient regardless of whether the services are rendered by the chiropractor of record or by any other person rendering chiropractic services or ancillary treatment to the patient.

15. Pursuant to N.J.A.C. 13:44E-2.4(b), in effect since August 19, 1991, if the name of the chiropractor of record is not conspicuously identified on the patient record, it shall be presumed that the chiropractor of record is the owner of the practice in which the patient was treated. There was no designation of the chiropractor of record in a substantial number of the patient files of the treatment clinics.

16. Pursuant to N.J.A.C. 13:44E-2.4, in effect since August 19, 1991, any licensee found to have rendered services in violation of N.J.S.A. 45:1-21 and the owner of the facility in which the licensee rendered such services shall be jointly and severally responsible for any restoration of patient fees as may be ordered by the Board.

COUNT I

CHARGING FOR SERVICES NOT RENDERED OR RENDERED IN AN ILLUSORY AND INEFFECTIVE MANNER

1. Complainant repeats the previous allegations as if fully set forth herein.

2. At all relevant times herein, and since March 1991, Respondents repeatedly directed, permitted and condoned certain acts and practices by the Associates; these acts and practices constituted the repeated rendering of diagnostic services in an

illusory, indiscriminate and ineffective manner. Respondents charged for these services. Specific examples of such conduct include, but are not limited to, the following:

A. Purported initial chiropractic examinations of patients were performed in a very short period of time, often in as few as three to five minutes; the Associates were required by Respondents to take only this time to perform examinations; these examinations were performed in an illusory indiscriminate and ineffective manner using only techniques and tests of short duration.

B. Chiropractic and orthopedic tests requiring shorter periods of time were repeatedly used, and tests requiring longer periods of time were avoided, in order to speed the initial examination process. When so administered in an abbreviated manner, said tests resulted in unreliable, often insufficiently specific, and therefore, inconclusive or inaccurate diagnostic findings, not supportive of subsequent diagnostic and treatment courses taken at the treatment centers. For example:

i. The following tests of short duration were repeatedly performed on patients including, but not limited to, Isabel Irizarry, Maria Ledesma, Dwight Turner, Leron Turner, Zoila Vargas and Margarita Nuviola: for example, cervical range of motion without the use of an arthrodial protractor or goniometer, foraminal compression, lumbar range of motion and deep tendon reflexes.

ii. The following tests of longer duration were rarely, if ever, performed on patients, including, but not limited to, I. I., M.L., D.Tu., L.T., Z.V. and M.N.: for example, mensuration, muscle testing, grip strength testing by hand dynamometer, Hoovers sign for malingering, and the Georges test. Such tests should have been performed on these patients, given their diagnoses and the circumstances of their cases.

C. Associates were directed by Respondents to make a finding of and to use the term "disk displacement" in their diagnoses of all patients. The initial examinations repeatedly concluded in the diagnoses of "disk wedging" or "disk displacement". For example, in all of the following patients, disk displacements or disk wedging was purportedly found

M.N.
J.M.
I.I.
L.T.
D.Tu.
Z.V.
M.A.
D.Ti.
B.W.
H.V.
D.To.
R.G.
T.O.
L.S.
M.Ma.
M.W.
M.L.
M.R.
T.C.
P.R.
C.F.
R.K.
A.B.
C.V.
J.P. and
A.P.

If the term "disk displacement" was intended to connote diagnostically significant disk bulging or disk herniation, then there were repeatedly insufficient chiropractic or medical indications in the patients' overall records to support such conclusions. If the term "disk displacement" meant a diagnostically insignificant condition common to most or all patients and to most or all human beings, then the use of the term was misleading and fraudulent.

D. Associates were directed by Respondents that diagnoses must not include the recognized but less serious chiropractic finding of "sprain/strain" which involves a muscle problem; instead, the more serious chiropractic finding of "radiculitis" was required by Respondents, even though, in most or all cases, sufficient chiropractic indications were lacking; radiculitis indicates nerve involvement.

3. As a result of the above stated illusory, indiscriminate or improperly performed diagnostic services, diagnoses on patients were repeatedly unreliable and therefore inconclusive or inaccurate in that they were overly broad, all-encompassing, and not pertinent and particularized to the individual patients being examined. The following patients' records reflect this type of diagnoses:

M.N.
J.M.
I.I.
L.T.
D.Tu.
Z.V.
M.A.

B.W.
H.V.
D.To.
R.G.
T.O.
L.S.
M.Ma.
M.W. and
M.L.

4. Respondents charged for chiropractic treatment services which were repeatedly rendered in an illusory, indiscriminate and ineffective manner. Such conduct included, but is not limited to, the following:

A. All patients at the Passaic treatment center, purportedly received, at each visit, what were purported to be an adjustment, plus heat treatment, plus either traction or electric muscle stimulation. At the Paterson treatment center, patients purportedly received the same series of treatments. Such conduct included, but is not limited to the following cases and purported treatments:

i. In the case of I.I., the patient was purportedly treated approximately 88 times from May 19, 1992 to November 12, 1992 (177 days). From May 19, 1992 to June 9, 1992, she purportedly received at each visit, a cervical adjustment, a thoracic adjustment, a lumbar adjustment, a pelvic adjustment, electric muscle stimulation and hydrotherapy. In that time period, she also, on five visits, purportedly received traction. From June 9, 1992 until October 25, 1992, she purportedly received the same adjustments and treatment including occasional traction as above, plus neuromuscular reeducation which was begun on June 9,

1992. From October 28, 1992 to November 12, 1992, the patient purportedly received all of the above treatments and adjustments.

ii. In the case of M.L., the patient was purportedly treated approximately 59 times from October 12, 1992 to January 27, 1993 (106 days). On every single visit, patient purportedly received a cervical adjustment, a thoracic adjustment, a lumbar adjustment, electric muscle stimulation, hydrotherapy and neuromuscular reeducation.

iii. In the case of D.T., the patient was purportedly treated approximately 88 times from July 2, 1992 to November 11, 1992. (132 days). On every single visit, the patient purportedly received a cervical adjustment and a thoracic adjustment, neuromuscular reeducation hydrotherapy. On all but 17 visits, he received electric muscle stimulation.

iv. In the case of L.T., the patient was purportedly treated approximately 47 times from July 2, 1992 to September 20, 1992 (80 days). On every single visit, the patient purportedly received a cervical adjustment and a thoracic adjustment. On all but two visits, he purportedly received a lumbar adjustment and a pelvic adjustment. He purportedly received neuromuscular reeducation and heat therapy on every single visit and electric muscle stimulation on all but 14 visits.

v. In the case of M.N., the patient was purportedly treated approximately 48 times from February 28, 1992 to June 3, 1992 (97 days). On every single visit, the patient purportedly

received a cervical adjustment, a thoracic adjustment and a lumbar adjustment, electric muscle stimulation and heat therapy.

vi. In the case of Z.V., the patient was purportedly treated approximately 48 times from October 25, 1991 to February 5, 1992 (73) days. On every single visit from October 29 on, the patient purportedly received a cervical adjustment, a lumbar adjustment, traction and heat therapy.

vii. In the case of M.A., the patient was purportedly treated approximately 86 times from May 19, 1992 to December 22, 1992 (216) days. Patient purportedly received cervical, thoracic and lumbar adjustments and hydrotherapy on each visit. She purportedly received neuromuscular reeducation 61 times on every visit from June 9, 1992 to November 13, 1992. (She terminated treatment because she did not want to continue care and did not want to take x-rays. She gave birth on December 29, 1992.)

viii. In the case of T.O. the patient was purportedly treated approximately 110 times from November 4, 1991 to May 14, 1992 (192 days). Patient purportedly received cervical, thoracic and lumbar adjustments on all visits except 7 (from January 30, 1992 to February 11, 1992, during which time a new travel card (the document used to record progress notes) was being used, and she only received purported cervical and thoracic adjustments.)

B. Chiropractic adjustments at the Passaic treatment center were purportedly rendered by use of the "activator", an instrument which is recognized by some in the chiropractic community as a proper tool for performing adjustments, but which

must be used according to proper protocol by properly trained persons in an appropriate manner under appropriate circumstances; associates at the Paterson and Passaic treatment centers were required by Respondents to use the activator in an illusory manner in practically every case in the absence of all the proper circumstances.

C. "Neuromuscular reeducation", a therapeutic procedure, was charged for after June 8, 1992, , but was repeatedly either not performed, or was repeatedly performed in an improper or illusory manner in a few seconds rather than in the normal thirty minutes normally required to properly and effectively perform this chiropractic procedure. This treatment was not rendered at the treatment centers prior to June 8, 1992, and was only purportedly rendered and billed for after that date, which was approximately two months after State law had changed regarding allowable billable costs. In addition, this purported "neuromuscular reeducation" was administered to patients whose symptoms did not justify and were not of the severity normally associated with the need for true neuromuscular reeducation.

In the following cases, improper or illusory neuromuscular reeducation was used:

I.I.
M.L.
D.Tu.
L.T.
M.A.
L.S.

In all of these cases treatment was rendered after June 8, 1992. In the case of Isabel Irizarry, neuromuscular reeducation was not used prior to June 8, 1992 but was used at each visit thereafter.

D. Various modalities including purported heat treatments, electric muscle stimulation and traction were repeatedly performed on patients without allowing sufficient time for the modalities to have the effect customarily and normally required in the utilization of these modalities.

5. Chiropractic treatments such as adjustments, heat treatments and electrical muscle stimulation treatments and neuromuscular reeducation were repeatedly charged for but were not rendered.

A. Patient D.To. has stated under oath that, once a week, she did not receive manipulations during her visits to the Paterson treatment clinic.

B. Patient C.C. has testified that he received manipulations only twice a week although the billing file indicates manipulations five times per week.

C. Patient J.P. has stated under oath that he did not receive heat packs each day although they were billed for each day.

D. In addition, the following patients have made statements concerning the treatments they received which, when compared with documentation of treatments billed, indicate that

the treatments charged for Respondents exceeded those stated by these patients to have been received.

1. N.P.
2. M.R.
3. R.J.
4. W.C.
5. I.R.
6. M.G.
7. M.Mu.
8. E.F. Sr.
9. E.F. Jr.

6. The charging for diagnostic and treatment services not rendered or rendered in an illusory indiscriminate or ineffective manner constitutes dishonesty, fraud, deception and misrepresentation on the part of Respondents.

7. All of the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(b) for the revocation or suspension of Respondents' licenses to practice chiropractic in the State.

COUNT II

FAILURE TO PERFORM CHIROPRACTIC DIAGNOSTIC
EXAMINATIONS APPROPRIATE TO THE PRESENTING
PATIENTS - VIOLATION OF N.J.A.C. 13:44E-1.1(b)
AND THEREFORE OF N.J.S.A. 45:1-21(h).

1. Complainant repeats the previous allegations as if fully set forth herein.

2. The progress note forms utilized by Respondents included a code system whereby

- "1" denoted "much better/no complaints",
- "2" denoted "doing fair/doing better",
- "3" denoted "little improvement",
- "4" denoted "same/no chance",

"5" denoted "worse",
"6" denoted "much worse" and
"7" denoted "new condition".

Dr. Kuntzevich demanded that Associates always place "3" or "4" on in the spaces provided for each visit to show the status of the patient at that visit. This practice contributed to substantially flawed patient records which made them unreliable in rendering proper ongoing diagnosis and treatment.

3. The illusory, indiscriminate and ineffective performance of chiropractic diagnostic examinations constitutes a violation of N.J.A.C. 13:44E-1.1(b) in that the examinations were not appropriate to the presenting patient.

4. All of the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(h) for the revocation or suspension of Respondents' licenses to practice in this State.

COUNT III

RENDERING OF CHIROPRACTIC TESTING AND TREATMENTS WITHOUT MEDICAL NECESSITY AND IN VIOLATION OF N.J.S.A. 45:1-21 (b)

1. Complainant repeats the previous allegations as if fully set forth herein.

2. At the Passaic treatment center, x-rays were ordered for the vast majority of patients, both adults and children, although many of these patients had already been x-rayed at a previous health care facility, had those prior x-rays available, and although the x-rays caused to be taken at the Passaic treatment

center were rarely if every utilized in determining a course of chiropractic treatment; the x-rays were taken solely to bolster the patients' automobile accident personal injury lawsuits.

3. Chiropractic treatments were repeatedly rendered according to uniform directive from Respondents and without any indications of there being any necessity for these treatments.

A. In the Passaic Treatment center, at least one of the Associates was told there must be seventy to eighty treatments for each adult and fifty treatments for each child.

B. At the Passaic treatment center, patients were, at one point, automatically scheduled for care five times during the first two weeks, three times during the second two weeks and two times during the third week of treatment; at some point in 1992, associates were directed by Respondents to schedule all patients six times per week for the first three months.

D. At the Newark treatment center, treatments were rarely terminated based on the finding by the treating associate that there was no further need for treatment, but solely because of the termination of insurance coverage, or, in rare instances, because the patient stopped returning for "treatments".

E. At the Passaic treatment center, patients were required by Respondents to have an adjustment, receive a heat modality and either electric muscle stimulation or traction at each visit as reflected in the examples set forth in Paragraph 4 of Count I herein.

F. At the Newark treatment center, patients received an adjustment and also traction, electric muscle stimulation and hot packs.

G. The reason that heat was one of the required modalities was because the modality could purportedly be used simultaneously with either traction or electric muscle stimulation traction. The application of electrical muscle stimulation simultaneous with traction would not be a preferred method of application because it would interfere with the effect of the rollers on the spinal segment..

H. The results of diagnostic tests repeatedly had no effect on and no rational relationship to the treatment regimen; associates at the Passaic and Newark treatment centers state that the results of the diagnostic tests had no effect on treatment. For example in the records of patients listed in Paragraph 4 of Count I, herein, there is rarely if ever an effect on treatment reflected in the records of these patients.

I. The length of application of modalities and of the time for adjustment at the Paterson and Passaic treatment centers was governed by a light timing system which artificially regulated and minimized the length of time during which modalities were applied (often approximately three to five minutes) and the length of time during which chiropractic adjustments could be performed (an additional three minutes), without regard to the individual and particularized needs of the patients purportedly being treated.

4. The reason Respondents directed that x-rays be taken in every case was that numerous x-rays were necessary to support litigation in automobile negligence personal injury actions, rather than for appropriate chiropractic and medical reasons.

5. The purpose for the prescribed number of treatments was to support litigation and to justify inflated damage claims in automobile negligence personal injury actions; if a patient stopped coming for treatments, letters were sent to the patients by staff assistants of Respondents threatening to provide a finding that no permanent injuries existed and threatening to advise the patient's attorney and insurance company that there was no medical reason for them to continue with the case. For example:

A. A letter sent over the signature, or purported signature, of Cecilia Jaramillo, the clinic director at the Passaic treatment center to patient Austria de la Rosa on July 27, 1992 threatened that, if the patient did not return for treatment or call within 5 days, a report would be sent to the patient's attorney stating that the patient has no permanent injuries and that there was no medical reason to continue with the patient's legal case.

B. An identical letter, verbatim except for the patients' names and the applicable dates, was sent to patient Luis Velez on July 23, 1992.

C. Form postcards from the Passaic treatment center, the West New York treatment center and the Newark treatment

center would notify the patient that he or she had missed scheduled appointments, and that the patient's case "is now in jeopardy".

6. Numerous expensive diagnostic tests were performed on patients by Respondents' treatment centers or diagnostic centers without any defined chiropractic justification or explanation, but solely to raise the amount of billings to be paid by third party payers and to support personal injury litigation by the patients. The patient records listed in Paragraph 4 of Count I reflect these types of diagnostic tests.

7. The predominant purpose for the regimens established by Respondents for diagnostic testing and treatment to was to support litigation and to justify inflated health insurance claims.

8. The rendering of chiropractic diagnostic and treatment services for no valid chiropractic, medical, or other health care purpose but to support litigation and to justify inflated health insurance claims constitutes dishonesty, fraud, deception and misrepresentation, and, therefore, grounds pursuant to N.J.S.A. 45:1-21(b) for the revocation of suspension of Respondents' licenses to practice chiropractic in this State.

COUNT IV

GROSS AND REPEATED ACTS OF NEGLIGENCE IN DIAGNOSTIC AND TREATMENT PROCEDURES.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. The illusory, indiscriminate and ineffective performance of chiropractic examinations including, but not limited

to, the performance of unnecessary and excessive x-rays, the performance of chiropractic services in the manner and according to the regimens established in the treatment clinics, and the unnecessary performance of diagnostic tests or the referral for such tests and the charging for these services constitute gross and repeated acts of negligence by Respondents.

3. The rendering of chiropractic diagnostic or treatment services in a grossly and repeatedly negligent manner constitutes grounds pursuant to N.J.S.A. 45:2-21(c) and (d) for the revocation or suspension of Respondents' license to practice chiropractic in the State.

COUNT V

PERFORMANCE OF DIAGNOSTIC TESTING AT THE TREATMENT CENTERS AND REFERRAL TO THE DIAGNOSTIC CENTERS AND OTHER HEALTH CARE PROFESSIONALS WITHOUT ADEQUATE CHIROPRACTIC OR MEDICAL JUSTIFICATION

1. Complainant repeats the previous allegations as if fully set forth herein.

2. Respondents caused to be performed diagnostic testing, either at the treatment centers or by referral to the diagnostic centers in which Respondents had a substantial financial interest, without adequate chiropractic or medical justification. The patient records of the patients listed in Paragraph 4 of Count I reflect the following tests performed without such justification.

A. Respondents caused Somatosensory Evoked Potential tests ("SSEPs") to be performed by Northern Diagnostics,

a facility which Respondents wholly owned, without chiropractic or medical justification and without sufficient indication in the patient records that simple pinwheel tests and other basic tests had been performed, and without sufficient indication of clinical findings sufficient to justify the performance of these SSEPs, the charges for which ranged from \$900 to, more often, over \$2,000, and often \$2,800 per patient.

B. Respondents caused thermograms to be performed at Advanced Thermographic Imaging, a facility which Respondents wholly owned, without chiropractic or medical justification and without sufficient indication in the patient records that other basic tests had been performed and without sufficient indication of clinical findings sufficient to justify the performance of these thermograms, the charges for which were normally \$1,290 for cervical, thoracic and lumbar thermograms, and occasionally \$1,720 when a facial thermogram would be added.

C. Respondents caused computerized mechanical, isometric muscle testing with torque curves (hereinafter "computerized muscle tests") and printed reports to be performed by Neuro-Kinetic Diagnostics, a facility which Respondents wholly owned, without chiropractic or medical justification and without sufficient indication in the patient records to justify the performance of these computerized muscle tests, the charges for of which were usually in the range of four hundred fifty (\$450) dollars. Patient records reflect two to as many as six test series

so that, for example, with one patient, the charges for these tests reached two thousand seven hundred (\$2,700) dollars.

D. Respondents caused nerve conduction velocity tests (hereinafter ("NCVs") and needle electromyographies (hereinafter "needle EMGs") to be performed by Associated Health Services, a facility which Respondents owned with Harry D. Citroenbaum, M.D., without chiropractic or medical justification and without sufficient indication in the patient records to justify the performance of these muscle tests, the charges for which ranged from \$400 to, more often, \$628 for needle EMG's.

E. Respondents caused patients to be referred for dental examinations to be performed by Drs. Rosenberg and Herman without chiropractic or medical justification and without sufficient indication in the patient records to justify referral of these patients. Drs. Rosenberg and Herman paid Respondents five hundred dollars for "rental" of facilities each time they came to the treatment centers to perform dental examinations.

F. Respondents referred patients for magnetic resonance imaging exams (hereinafter "MRIs") without sufficient justification and without sufficient indication in the patient records to justify such referral.

3. In an overwhelming majority of the cases in which these diagnostic tests were performed, the results were not received by the treatment clinics until one to two months after the tests had been performed, a period far in excess of the response time normally the case when tests are meaningfully ordered by the

treating physician, performed by the testing facility and the response received by the treating physician.

4. There is no indication that the results of these diagnostic tests had any significant effect on the treatment plan of the patients who were tested. The only significant effect appears to have been that when positive MRIs were received, diagnoses of "bulging disks" or "displaced disks" were changed to "herniated disks" to support a finding of more serious injuries.

5. These tests were automatically ordered for all patients without reference to any chiropractic or medical justification; scheduling was performed by unlicensed staff with no discretion allowed to be exercised by the licensed treating Associates. Associates were instructed to mechanically sign the prescription or referral forms; in addition, signature stamps for the Associates' signatures were also utilized to "sign" the prescription or referral forms without reference to any determinations made by the treating Associates.

6. Respondents signed medical insurance forms indicating that the services billed were rendered and were medically necessary and reasonable.

7. Given the inadequate initial diagnostic examinations and the uniform treatment programs not reflecting any adaptation to individual patients, the diagnostic tests such as SSEPs, thermograms, computerized muscle tests, NCVs, needle EMGs, MRIs and dental examinations were not performed with any apparent clinical purpose.

8. The indiscriminate referral for these diagnostic tests without sufficient chiropractic or medical justification but only for the purpose of increasing fees and revenues to Respondents and bolstering personal injury litigation of the patients constitutes dishonesty, fraud, deception and misrepresentation.

9. All of the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(b) for the revocation or suspension of Respondents' licenses to practice chiropractic in this State.

COUNT VI

REFERRALS FOR THE DIAGNOSTIC TESTS AND THE MANNER OF USE OR NON-USE OF THE RESULTS CONSTITUTED GROSS AND REPEATED ACTS OF NEGLIGENCE

1. Complainant repeats the previous allegations as if fully set forth herein.

2. The Respondents' indiscriminate referral for the diagnostic tests in the manner practiced by Respondents caused unnecessary pain and suffering to patients and unnecessary exposure to radiation.

3. Patients were caused pain and suffering unnecessarily by indiscriminate referral for needle EMGs which required the insertion of needles into patients' bodies and which thereby caused them substantial pain.

4. Respondents failed to secure the results of these tests, including but not limited to the needle EMGs and x-rays in a timely manner and to make use of the results to formulate a treatment plan.

5. Respondents' conduct in this manner constituted gross and repeated acts of negligence.

6. All of the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(c) and (d) for the revocation or suspension of Respondents' licenses to practice chiropractic in the State.

COUNT VII

DIAGNOSTIC TESTS PERFORMED IN RESPONDENTS'
FACILITIES WERE PERFORMED IN A GROSSLY AND
REPEATEDLY NEGLIGENT MANNER.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. Somatosensory Evoked Potentials tests performed by the Northern Diagnostics and the interpretation thereof were performed in an ineffective and negligent manner. For example in the case of patient D.U., SSEPs were performed on January 28, 1992 and a report was issued over the signature of Robert W. Jamison, D.O. The findings of the SSEP indicate "abnormal radial nerve somatosensory evoked potential". However, the actual tracings reflect no abnormal findings.

3. Within the test reports issued by Northern Diagnostics, and when the contents of those test reports are compared to the entire patient record of the pertinent patient, there are numerous discrepancies reflecting lack of necessity for the SSEPs, and that the tests were improperly performed or interpreted.

4. Respondents, as licensed chiropractic physicians and as owners of Northern Diagnostics, were responsible for diagnostic tests performed within that facility and were responsible to ensure that services rendered in that facility were not in violation of N.J.S.A. 45:1-21.

5. All the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(d) for the revocation or suspension of Respondents' licenses to practice chiropractic in this State.

COUNT VIII

COERCING PATIENTS TO CONTINUE TO RETURN FOR TREATMENTS IN A MANNER WHICH CONSTITUTES PROFESSIONAL MISCONDUCT, DISHONESTY, FRAUD, DECEPTION OR MISREPRESENTATION.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. If patients did not come for scheduled appointments, Respondents caused telephone calls to be made to harass the patients for not returning for appointments.

3. If a patient did not come for appointments, Respondents caused to be issued written correspondence threatening that the delinquent patient's legal case placed was in jeopardy and further threatening that reports would be forwarded to the patient's attorneys and insurance companies stating that such patient had no permanent injuries and that there was no medical reason for the patient to continue with the case. Examples of such correspondence are set forth in Paragraph five of Count III herein.

4. Such conduct constitutes the use of dishonesty, fraud, deception or misrepresentation and professional misconduct.

5. All the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(b) and (e) for the revocation or suspension of Respondents' licenses to practice chiropractic in this State.

COUNT IX

PRESCRIBING TENS UNITS AND OTHER CHIROPRACTIC AND MEDICAL HARDWARE WITHOUT CHIROPRACTIC OR MEDICAL NEED.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. Hardware supplies such as TENS units, and in the cases of purported neck problems, supplies such as cervical pillows, heating pads and cervical collars, and, in the case of purported lumbar problems, supplies such as lumbar cushions, support belts and heating pads, were regularly supplied on a routine basis according to prearranged schedules and without regard to the individual medical needs of the patients in each case.

3. Although the associate chiropractor rarely if ever made individual decisions to prescribe TENS units, such units were routinely issued to the patients.

4. The indiscriminate issuance of such chiropractic and medical hardware, without sufficient indication of chiropractic or medical need, but only for the purposes of raising revenue for Respondents and bolstering patients' personal injury litigation

cases, constitutes dishonesty, fraud, deception and misrepresentation.

5. All the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(b) for revocation or suspension of Respondents' licenses to practice chiropractic in this State.

COUNT X

DISPENSING TENS UNITS AND OTHER HARDWARE
REPEATEDLY IN A GROSSLY AND REPEATEDLY
NEGLIGENT MANNER

1. Complainant repeats the previous allegations as if fully set forth herein.

2. The repeated indiscriminate dispensing of TENS units and other hardware without medical need or necessity constitutes gross and repeated acts of negligence.

3. All the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(d) for revocation or suspension of Respondents' license to practice chiropractic in this State.

COUNT XI

PERMITTING PERFORMANCE AND APPLICATION OF
PHYSICAL MODALITIES BY UNLICENSED EMPLOYEES
WITHOUT ADEQUATE SUPERVISION.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. Respondents permitted unlicensed assistants without proper supervision to perform physical modalities, including the

placing of heat packs, electric muscle stimulation and traction without adequate supervision by a licensed chiropractor.

3. Permitting performance of such modalities in a chiropractic office by unlicensed assistants not acting under proper supervision constitutes aiding and abetting the practice of chiropractic without a license in violation of N.J.S.A. 45:9-14.5 and, therefore, professional misconduct.

4. All the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(e) for revocation or suspension of Respondents' licenses to practice chiropractic in this State.

COUNT XII

PERMITTING THE ORDERING OF TESTS BY EMPLOYEES NOT LICENSED AS CHIROPRACTORS.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. Respondents permitted employees who were unlicensed assistants to refer patients for diagnostic tests, including SSEPs, thermograms, mechanical, isometric muscle testing with torque curves, NCVs, and needle EMGs without direct supervision by a licensed chiropractor.

3. Permitting such referrals constituted aiding and abetting the unlicensed practice of chiropractic and, therefore, professional misconduct.

4. All the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(e) for revocation or suspension of Respondents' licenses to practice chiropractic in this State.

COUNT XIII

COMMITTING OR PERMITTING ASSOCIATE
CHIROPRACTORS AND UNLICENSED EMPLOYEES TO
COMMIT REPEATED VIOLATIONS OF THE BOARD'S
RULES REGARDING PATIENT RECORDS AND
CHIROPRACTOR OF RECORD, N.J.A.C. 33:44E-2.2
AND N.J.A.C. 33:44E-2.4 RESPECTIVELY.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. Contrary to and in violation of the provisions of N.J.A.C. 33:44-2.2(a), Respondents failed to keep records or kept only illusory, unreliable and substantially undifferentiated records regarding a pertinent case history, findings on appropriate examination, diagnosis/analysis, a treatment plan, the name of the licensee or other person rendering the treatment (such as unlicensed persons providing modalities), notation of significant changes in patient's condition and/or significant changes in treatment plan, and periodic notation of patient status regardless of whether significant changes had occurred.

3. Contrary to and in violation of the provisions of N.J.A.C. 13:44E-2.4(a), Respondents failed to have a chiropractor of record designated for each patient.

4. Contrary to and in violation of the provisions of N.J.A.C. 33:44E-2.4(b), Respondents failed to provide for the conspicuous identification of the chiropractor of record on the patient records.

5. Contrary to and in violation of N.J.A.C. 33:44E-2.4(d), Respondents failed to provide, in their multi-chiropractor practice, that the chiropractor of record remain the same until a

subsequent chiropractor affirmatively noted in the patient record that he or she was currently the chiropractor of record.

6. Contrary to and in violation of N.J.A.C. 13:44E-2.4(e), Respondents committed professional misconduct in that they failed to provide for compliance by their associates within the treatment centers with the requirement that a new chiropractor of record must review the patient's history and chiropractic records, examine the patient, if necessary, and either develop a new treatment plan or continue the pre-existing plan.

7. All of the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(e) and (h) for revocation or suspension of Respondents' licenses to practice chiropractic in this State.

COUNT XIV

DIRECTING OR PERMITTING THE FALSIFICATION OF RECORDS.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. When, in late 1992 or early 1993, due to computer programming or computer error, information submitted to third part payers regarding patient records did not correspond and correlate with the actual treatments rendered to a significant number of patients as reflected in the treated records, Associates were ordered by Respondents through the office manager, Frieda Finklestein, to change their records of patients' treatments solely for the purpose of having the information correspond with the computerized records submitted to a third party payer.

3. Respondents had previously directed Associates to obey the directions of the office manager, Frieda Finklestein.

4. This conduct constitutes a violation of N.J.A.C. 13:44E-2.2(a) which requires that accurate patient records be maintained by licensees of the Board.

5. In any cases where the patient was truly injured, such a change in records could be severely detrimental to the safety and welfare of the patient. This conduct therefore constituted gross and repeated acts of negligence. This conduct also constituted dishonesty, fraud deception or misrepresentation and professional misconduct.

6. All the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(b), (c), (d), (e) and (h) for revocation or suspension of Respondents' licenses to practice chiropractic in this State.

COUNT XV

ISSUANCE OF FALSE AND MISLEADING NARRATIVE REPORTS OF PATIENT DIAGNOSIS, TREATMENT, STATUS AND PROGNOSIS.

1. Complainant repeats the previous allegations as if fully set forth herein.

2. Narrative chiropractic reports entitled "From the Desk of Mary Pat Ferreri, Executive Administrative Assistant to Drs. Verchow and Kuntzevich" were issued in the cases of most patients purportedly treated at the treatment centers of Respondents. These reports were purportedly dictated but not read

by "Dr. Steven Verchow, Dr. Alexander Kuntzevich and Associates" they were regularly left unsigned, with the signature lines being left blank.

3. These reports uniformly indicated that there was permanent injury suffered by patients and that further treatment was necessary, except in two types of cases:

A. If insurance coverage had been terminated due to the performance of an independent medical examination or due to some other reason, further treatment was not reported to be required.

B. If the patient had unilaterally stopped coming for visits, the narrative reports routinely stated there was no permanent injury.

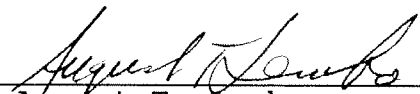
4. These reports were false and misleading. They did not accurately reflect a diagnosis or patient status as required by N.J.A.C. 13:44E-2.2(a)5 and 11; their sole purpose was to defraud third party payers and adverse parties in personal injury lawsuits. This constitutes dishonesty, fraud, deception and misrepresentation.

5. All the foregoing constitutes grounds pursuant to N.J.S.A. 45:1-21(b), (d), (e) and (h) for revocation or suspension of Respondents' licensees to practice chiropractic in this State.

WHEREFORE, it is respectfully demanded that the State Board of Chiropractic Examiners:

1. Suspend or revoke the licenses theretofore issued to Respondents to practice chiropractic in the State of New Jersey;
2. Issue an Order directing Respondents to cease, desist and refrain from the practice of chiropractic in the State of New Jersey;
3. Assess such monetary penalties for each separate unlawful act as set forth in Counts I through XV above;
4. Order payment of costs, including investigative costs, fees for expert witness and costs of trial, including transcripts;
5. Issue an Order directing Respondents to restore to any party or governmental entity aggrieved by the unlawful acts or practices of Respondents in the course of such conduct; and
6. Order such and further relief as the Board of Chiropractic Examiners shall deem just and appropriate.

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

By: 
August T. Lembo
Deputy Attorney General

DATED: October 12, 1994